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REPORTS OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS, THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL

SINGAPORE REPORTS

MAH KAH YEW v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J., Chua and Winslow JJ.) November 11, 1970]

[Singapore — Magistrate's Appeal No. 51 of 1970]

Penal Code, s. 304A — Causing death by doing a negligent act — Standard of negligence — Whether different standard of negligence applicable to civil and criminal cases.

Judicial Precedent — Stare decisis — Whether High Court in Singapore bound by decision of Court of Appeal of Sarawak, North Borneo and Brunei — Malaysia Act, 1963, s. 88(3) — Republic of Singapore Independence Act, 1965, s. 13.

The appellant appealed against his conviction on a charge of causing death by doing a negligent act not amounting to culpable homicide being an offence under section 304A of the Penal Code. The appeal was referred by the judge of the High Court for hearing before a court consisting of three or more judges under section 295(3) of the Criminal Procedure Code (Cap. 132). The appeal was allowed as the evidence given by the prosecution witness was contradictory and unsatisfactory. During the hearing a point of law was raised by the appellant relating to the standard of negligence applicable in cases under section 304A of the Penal Code. The learned district judge had held, following the decision of the Full Bench of the High Court in *Woo Sing* v. *R.*(1) that the English law of manslaughter has no relevance to the interpretation of section 304A of the Penal Code and that the standard of negligence was the same in civil and in criminal cases. It was contended on behalf of the appellant, relying on the decision of the Court of Appeal of the Federated Malay States in *Cheow Keok* v. *Public Prosecutor*(2) that the same high degree of negligence must be proved before a person could properly be convicted of an offence under section 304A of the Penal Code as would be required to be proved to sustain a conviction for manslaughter in England.

Held: by virtue of the provisions of section 88(3) of the Malaysia Act and section 13 of the Republic of Singapore Independence Act, 1966, the High Court in Singapore is bound by the decision of the Court of Appeal of Sarawak, North Borneo and Brunei in *Public Prosecutor* v. *Mills*(7) which is of the like effect as if the court was the Federal Court and therefore it must be accepted that the nature and degree of negligence in an act causing death required to support a conviction under section 304A of the Penal Code is the same as that in any other act carried out so rashly or negligently as to endanger human life or the safety of others where that act was the immediate cause of the death and not the remote cause.

Cases referred to:-

(1) *Woo Sing* v. *R.* [1954] M.L.J. 200.

(2) *Cheow Keok* v. *Public Prosecutor* [1940] M.L.J. 103.

(3) *Velasquez Ltd.* v. *Inland Revenue Commissioner* [1914] 3 K.B. 458 at p. 461.

(4) *Conway* v. *Rimmer* [1968] A.C. 910 at p. 958.

(5) *Young* v. *Bristol Aeroplane Co. Ltd.* [1944] 1 K.D. 718.

(6) *R.* v. *Taylor* [1950] 2 K.B. 368 at p. 371.

(7) *Public Prosecutor* v. *Mills* Brunei Criminal Appeal No. 3 of 1955 reported in Appendix (page 4 *infra*).

(8) *In re Lee Gee Chong* [1966] 1 M.L.J. 102.

(9) *Anthonysamy* v. *Public Prosecutor* [1956] M.L.J. 247.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Chor Pee (*Syed Hassan Almenoar* with him) for the appellant.

Francis T. Seow (Solicitor-General) (*Tommy Neo* Deputy Public Prosecutor with him) for the respondent.

G. S. Hill, amicus curiae.

Wee Chong Jin C.J. (delivering the judgment of the court): The appellant appealed against his conviction by the Fifth Criminal District Judge on a charge of causing death by doing a negligent act not amounting to culpable homicide being an offence punishable under section 304A of the Penal Code and the appeal came up for hearing before the Chief Justice who reserved it for hearing before a court consisting of three judges pursuant to the provisions of section 295(3) of the Criminal Procedure Code which provides, *inter alia*, that on the order of a judge at any time before judgment an appeal may be reserved for hearing and be heard before a court consisting of three or more judges This court is therefore the High Court and its powers, although it consists of three judges, are no greater and no less than the powers of a single judge when both are exercising the same appellate jurisdiction.

At the conclusion of the appeal the court allowed the appeal and quashed the conviction and sentence because the evidence of the only witness called by the prosecution to prove the negligent act alleged against the appellant, namely his failure to stop the motor car he was driving at a road junction when the traffic lights controlling vehicular traffic at that junction were not in his favour, was so contradictory and unsatisfactory as to make it wholly unsafe for it to be relied upon.

During the hearing an important question of law was raised by the appellant and on this aspect of the

appeal Mr. Graham Hill appeared to assist the court as *amicus curiae*. The question of law is contained in the ground of appeal that "the district judge erred in law as to the standard and/or the quantum of proof required under section 304A of the Penal Code" which reads as follows: —

"304A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both."

The district judge followed the decision of the full bench of the High Court in *Woo Sing* v. *Regina*[1] which held that the English law of manslaughter has no relevance in the interpretation of section 304A which involves offences of much less gravity than such as would come within the scope of manslaughter in England. The full court also held that it was not necessary to lay down a different standard of negligence in civil and criminal cases. The appellant contended that the same high degree of negligence must be proved before a person could properly be convicted of an offence under section 304A as would be required to be proved to sustain a conviction for manslaughter by negligence in England and that the English authorities should be followed. He relied on the decision of the Federated Malay States Court of Appeal in *Cheow Keok* v. *Public Prosecutor*.[2]

The question of law raised by this ground of appeal is of importance because there are conflicting decisions of the courts of Singapore, of what is now Malaysia, and of the then Borneo territories of Sarawak, North Borneo and Brunei on the point so that it is necessary to consider the doctrine of *stare decisis* and its application in Singapore having regard to the constitutional changes relating to Malaya, Singapore and the said Borneo territories in 1963 and in 1965.

The doctrine of *stare decisis* is a necessary and well established doctrine in our system of jurisprudence and of our judicial system which we have inherited from England and a general statement of the doctrine can be found in the judgment of Cozens-Hardy M.R. in *Velasquez Ltd.* v. *Inland Revenue Commissioners*:[3]

"But there is one rule by which, of course, we are to abide — that when there has been a decision of this court upon a question of principle, it is not right for this court, whatever its own views may be, to depart from that decision. There would otherwise be no finality in the law."

In England before 1966 the law was that a decision of the House of Lords on a question of law was conclusive and bound the House in a subsequent case. The law as so stated by the House of Lords could be changed only by an Act of Parliament. However since July 1966, Lord Gardiner, the then Lord Chancellor, announced a departure from this rule ([1966] 2 M.L.J. xi) in a statement which we think it is useful to reproduce here as it contains a general statement of the doctrine of *stare decisis*. The statement reads as follows: —

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and unduly restrict the proper development of the law. They propose therefore to modify their present practice and while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so. In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the special need for certainty as to the criminal law. This announcement is not intended to affect the use of precedent elsewhere than in this House."

The latest House of Lords pronouncement on the doctrine is to be found in the speech of Lord Morris in *Conway* v. *Rimmer*: [4]

"though precedent is an indispensable foundation upon which to decide what is the law there may be times when a departure from precedent is in the interests of justice and the proper development of the law."

The application of the doctrine as regards the Court of Appeal in England can be found in the judgment of the full court consisting of six judges of the Court of Appeal in *Young* v. *Bristol Aeroplane Co. Ltd.*[5] At page 723 Lord Greene M.R. who delivered the judgment of the court said: —

"The question thus raised as to the jurisdiction of this court to refuse to follow decisions of its own was obviously one of great general importance and directions were given for the appeal to be argued before the full court. It is surprising that so fundamental a matter should at this date still remain in doubt. To anyone unacquainted with the rare cases in which it has been suggested or asserted that this court is not bound to follow its own decisions or those of a court of co-ordinate jurisdiction the question would, we think, appear to be beyond controversy. Cases in which this court has expressed its regret at finding itself bound by previous decisions of its own and has stated in the clearest terms that the only remedy of the unsuccessful party is to appeal to the House of Lords are within the recollection of all of us and numerous examples are to be found in the reports."

In England, therefore, decisions of the Court of Appeal on questions of law must be followed by courts of first instance and are regarded by the Court of Appeal to be binding on itself until they are reversed by the House of Lords. There are, however, three exceptions to this, namely: —

(i) the Court of Appeal is entitled and bound to decide which of two conflicting decisions of its own it will follow;

(ii) the Court of Appeal is bound to refuse to follow a decision of its own which though not expressly overruled, cannot, in its opinion, stand with a decision of the House of Lords;

(iii) the Court of Appeal is not bound to follow a decision of its own if it is satisfied that the decision was given *"per incuriam"* (see *Young* v. *Bristol Aeroplane Co. Ltd., supra*).

As regards the Court of Criminal Appeal in England the general rule is that a decision of its own although considered by a subsequent court to be wrongly decided will still be followed by the court in accordance with the principles above referred to, but in cases involving the liberty of the subject, the court does not regard itself as bound by its own previous decisions and if, on reconsideration, in the opinion of a full court, the law has either been misapplied or misunderstood in a previous case and in consequence a man has been wrongly sentenced it is the duty of the

court to consider whether he has been wrongly convicted (*per* Lord Goddard in *Rex* v. *Taylor*[6]).

We turn now to consider the application of the doctrine in Singapore. In principle it is clear that the courts of Singapore are not bound by a decision emanating from a court which does not form part of the judicial system of Singapore. As the Judicial Committee of the Privy Council is and has been since the earliest days of our judicial system the final court of appeal, all courts of Singapore are bound to follow decisions of the Judicial Committee of the Privy Council when they are decisions on appeal from a Singapore court.

Next, having stated earlier that the doctrine is a necessary and well established doctrine in our system of jurisprudence and of our judicial system, we are of the view the Court of Appeal would consider itself bound by its own decisions, subject to the above referred to limitations in *Young* v. *Bristol Aeroplane Co. Ltd.*, *supra*.

It is our opinion, also, and for the same reasons as expressed in *Rex* v. *Taylor*, *supra*, that the present Court of Criminal Appeal would not consider itself irretrievably bound by its own decisions or by those of a court of co-ordinate jurisdiction.

We are further of the opinion that the High Court in the exercise of its original or appellate civil jurisdiction is bound by decisions of our Court of Appeal and is similarly bound by decisions of our Court of Criminal Appeal where it exercises original or appellate or revisionary criminal jurisdiction.

It follows, therefore, that in principle this court would be bound in the present appeal to follow an applicable decision of the Court of Criminal Appeal given after the coming into force of the Supreme Court of Judicature Act, 1969. Similarly, in our opinion, this court would be bound to follow an applicable decision of the Federal Court of Malaysia given on an appeal from a Singapore court. Similarly, also, this court would be bound to follow an applicable decision of the then Court of Criminal Appeal of Singapore before Singapore became part of Malaysia on 16th September 1963.

There are, however, no such applicable decisions but there are two decisions given before 16th September 1963 by courts under other jurisdictions which the learned Solicitor-General submits are binding on this court having regard to two pieces of legislation enacted in 1963 and 1965 which have force as law in Singapore. The two decisions are *Cheow Keok* v. *Public Prosecutor*, *supra*, and *Public Prosecutor* v. *Mills*[7] and the two pieces of legislation are the Malaysia Act and the Republic of Singapore Independence Act, 1965. He contends that as these two decisions conflict with each other the question of law raised is therefore at large and this court is free to choose which of these two conflicting decisions it considers has stated the law correctly. He contends further that the court in *Public Prosecutor* v. *Mills*, *supra*, has decided the law correctly and that we should arrive at the same conclusion bearing in mind that another full bench of this court in *Woo Sing* v. *Regina*, *supra*, had, prior to *Mills* case, also decided the law to be as stated in *Mills* case and had declined to follow *Cheow Keok* v. *Public Prosecutor*, *supra*.

In the first place the provisions of section 88(3) of the Malaysia Act have to be considered. Section 88(3) reads as follows: —

> "88(3). Anything done before Malaysia Day in or in connection with or with a view to any proceedings in the Court of Appeal of the Federation, or of Sarawak, North Borneo and Brunei, or of Singapore, or the Court of Criminal Appeal in Singapore, shall on and after that day be of the like effect as if that court were one and the same court with the Federal Court."

This subsection has been judicially considered by the Federal Court of Malaysia, during the period when Singapore was part of Malaysia, in the case of *In re Lee Gee Chong deceased*[8] on an appeal from the High Court of Singapore and the Federal Court held that, by virtue of section 88(3) of the Malaysia Act the Federal Court must be regarded as being one and the same court, *inter alia*, as the Court of Appeal of Singapore. We are of the same opinion and in any event having regard to section 13 of the Republic of Singapore Independence Act, 1965, we are bound by that decision. The material provisions of section 13 read as follows: —

> "13.(1) Subject to the provisions of this section, all existing laws shall continue in force on and after Singapore Day, but all such laws shall be construed as from Singapore Day with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Act and with the independent status of Singapore upon separation from Malaysia.
>
> (7). In this section —
>
> 'existing law' means any law including written law having effect as part of the law of Singapore prior to Singapore Day; and
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> 'written law' includes the Constitution of Malaysia and the Constitution of Singapore and all Acts, Ordinances and enactments by whatever name called and subsidiary legislation made thereunder for the time being in force in Singapore."

The decision in *Cheow Keok* v. *Public Prosecutor*, *supra*, however, was not a decision of the Court of Appeal of the Federation of Malaya but was a decision of the Court of Appeal of the Federated Malay States. As such, therefore, we are of the opinion that it is not a decision of a court which is binding on us although it has highly persuasive authority.

In *Mills* case *supra*, however, which was decided in 1955, the court which gave the decision was the Court of Appeal of Sarawak, North Borneo and Brunei on a reference to it from the High Court of Brunei and was, therefore, a court which is expressly referred to in section 88(3) of the Malaysia Act. In *Mills* case the court declined to follow *Cheow Keok* v. *Public Prosecutor*, *supra*, and agreed with *Woo Sing* v. *Regina*, *supra*. It held that the nature and degree of negligence in an act causing death required to support a conviction under section 304A is the same as that in any other act carried out so rashly or negligently as to endanger human life or the safety of others where that act was the immediate cause of death and not the remote cause. In our judgment, by virtue of the effect of section 88(3) of the Malaysia Act and of the case *In re Lee Gee Chong deceased*, *supra*, the Federal Court and the High

Court of Singapore would be bound to follow *Mills* case if the point came up for consideration during the period when Singapore was part of Malaysia. Consequently, by virtue of section 13 of the Republic of Singapore Independence Act 1965, this court is bound by the decision in *Mills* case.

We would add that it is comforting that this result, namely that we are, by the doctrine of *stare decisis*, bound by the decision in *Mills* case, is arrived at solely on what we consider to be the proper interpretation of the provisions of section 88(3) of the Malaysia Act and section 13 of the Republic of Singapore Independence Act 1965, because it accords with the decision of the full bench of the High Court of Singapore in *Woo Sing* v. *Regina, supra*, and with our own views on the important question of law raised in this appeal. We do not consider it necessary to state the reasons why we would have arrived at the same result as the full court did in *Woo Sing* v. *Regina, supra*, and the Court of Appeal of Sarawak, North Borneo and Brunei did in *Mills* case. It is sufficient for us to say that we fully concur with the reasons given in the judgment of Buhagiar J. in *Anthonysamy* v. *Public Prosecutor*[9] in which the learned judge sets out his reasons for agreeing with the decision in *Woo Sing* v. *Regina, supra*.

Appeal allowed.

Solicitors: *Chor Pee & Hin Hiong.*

APPENDIX

PUBLIC PROSECUTOR v. P.G. MILLS

[C.A. (Williams C.J., Bodley J. and Bladgen Ag. J.) September 24, 1955]

[Kuching — Court of Appeal of Sarawak, North Borneo and Brunei, Criminal Appeal No. 3 of 1955]

Penal Code s. 304A — Nature and degree of negligence — Standard of proof.

The nature and degree of negligence in an act causing death required to support a conviction under section 304A of the Penal Code is the same as that in any other act carried out so harshly or negligently as to endanger human life or the safety of others where that act was the immediate cause of death and not the remote cause. The standard of proof of an offence under section 304A is the same as that required in any criminal offence in England.

COURT OF APPEAL.

Williams C.J. (President): This case comes before the Court of Appeal on the certificate of the Attorney-General pursuant to section 13 of the Courts Ordinance, 1951. The respondent, Peter Gilbert Mills, was charged before the High Court of Brunei in the following terms: —

"That you Peter Gilbert Mills of Messrs. British Malayan Petroleum Company Limited, Jerudong, State of Brunei, at or about 2.30 p.m. on the 13th day of May, 1955, at or close to Mile 2 on the main Brunei-Tutong Road in the State of Brunei caused the death of one Latip bin Awang Ladi by the negligent driving of a motor vehicle not amounting to culpable homicide and thereby committed an offence punishable under section 304A (1) of the Penal Code."

The trial took place before Rogers J. and two assessors and in the course of his summing up the learned trial judge said: —

"The prosecution have charged this man under section 304A (1) with causing the death of Latip by the rash driving of a motor vehicle.

In order to succeed, the standard of proof required is exactly the same and no less than the standard of proof required in a manslaughter case in England. What is usually known as manslaughter is what we are considering here. In order to satisfy the court that the man who caused the death of another man is guilty of manslaughter the prosecution have to prove a very high degree of negligence indeed. This is what has been laid down in England:

'In explaining to juries the test they should apply to determine whether the negligence in the particular case amounted or did not amount to a crime judges have used many epithets such as "culpable", "criminal", "gross", "wicked", "clear", "complete". But whatever an epithet be used and whether an epithet be used or not, in order to establish criminal liability, the facts must be such that, in the opinion of the jury, the negligence of the prisoner went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment: *R.* v. *Bateman* (19 Cr. App. R. 8)'."

Later in his summing up the learned trial judge directed the assessors that if they were not satisfied the prosecution had proved their case under section 304A (1) of the Penal Code, they might still convict him of rash or negligent driving under section 279 of the Penal Code. He said: "If you are not satisfied you must find him not guilty of the more serious charge, but if you do that it is open for you to convict him of a lesser charge, namely that of rash or negligent driving under section 279 of the Penal Code. This section reads as follows: —

'Whoever drives any vehicle, or rides, on any public way, in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred dollars, or with both'."

He went on to say: "If you think that he drove dangerously that afternoon you can say he is guilty of dangerous driving and not manslaughter, the degree of negligence necessary in the latter case being much higher than that in the case of dangerous driving"

The Public Prosecutor challenges these directions and by his certificate dated 15th July, 1955, asks the Court of Appeal to determine "the nature and degree of negligence in an act causing death required to support a conviction under section 304A aforesaid and the proper direction to give to the assessors in a case similar to that before the learned judge."

The learned trial judge's ruling that the standard of negligence required to sustain a conviction under section 304A (1) must be equivalent to that high standard required to sustain a conviction for manslaughter can only be supported if the offence of killing by a rash or negligent act under section 304A (1) can be accounted equivalent to the English crime of manslaughter. Manslaughter under English law is defined as

"the unlawful and felonious killing of another without any malice either express or implied, and is of two kinds — voluntary and involuntary. Voluntary manslaughter is killing upon sudden provocation or in the course of a sudden quarrel.